

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO.2871 OF 2001**

M/s.Universal Transport Co.  
222, Vyapar Bhavan, Ahmedabad  
Street, P.D'Mello Road, Mumbai - 9 ... Petitioners

V/s.

1. Siraj Kadarbhai China  
Room No.5, 2nd floor,  
Dovki Nivas, Shanti Nagar  
Near Bhora Masjid  
Mumbra, Dist.:Thane-400612

2. Shri A.B.M. Shaikh  
Presiding Officer  
7th Labour Court, Mumbai

3. Shri T.M. Mantri  
Member, Industrial Court  
Mumbai

... Respondents

Mr.K.S. Bapat for Petitioners  
Mr.Bhavin H. Gada i/b C.R. Naidu & Co. for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**  
DATED: **SEPTEMBER 28, 2005**

**ORAL JUDGMENT:**

. The Petitioners challenge the order of the Labour Court as well as the Industrial Court in revision. Both the Courts have held that the Petitioners have committed an unfair labour practice under Item 1(a), (b), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971. The Petitioners have been directed to reinstate the respondent-workman with continuity of service and full backwages and attendant

benefits w.e.f. 28.1.1994.

2. The facts in this case are not disputed. The Petitioners are a transport company engaged in business of transportation. They had employed respondent No.1 in 1990 as a Traffic Manager. It is the case of the Petitioners that the respondent remained absent on 15.10.1994. He continued to remain absent thereafter despite the Petitioners' letter calling upon him to resume duties.

A complaint was filed by Respondent No.1 being Complaint (ULP) No.92 of 1994 before the Labour Court. The Respondent-workman contended that the Petitioners had committed an unfair labour practice under 1(a), (b), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, 'MRTU & PULP Act') by terminating his services on 28.1.1994. The complaint was resisted by the Petitioners by filing their written statement. The Petitioners contended that the respondent was not a workman as defined under section 2(s) of the Industrial Disputes Act and, therefore, was not entitled to prosecute the complaint. According to the Petitioners, he was employed as a Traffic Manager and not as a senior clerk as contended by the Respondent and, therefore, the

Labour court had no jurisdiction to decide the complaint.

3. Evidence was led before the Labour Court. The Labour Court held that the Respondent was a workman as defined under section 2(s) of the Industrial Disputes Act r/w 3(5) of the MRTU & PULP At. On appreciating the evidence, it was found by the Labour Court that no appointment letter was issued to the Respondent. It was also brought on record in the evidence that the muster register for the year 1990 was missing from the office. The Labour Court did not accept the case of the Petitioners that the workman had abandoned his service. In these circumstances, the Labour Court came to the conclusion that the services of the respondent were wrongly terminated and that the Petitioners had removed the name of the respondent from the muster rolls. The version of the respondent was accepted and the Labour Court directed reinstatement with continuity of service and full backwages with all attendant benefits.

4. Aggrieved by the decision of the Labour Court, the Petitioner filed a revision application under section 44 of the MRTU & PULP Act. The revision was rejected. The Industrial Court accepted the findings of the Labour Court and held that the relevant documents

such as muster roll, etc. were not produced. The Industrial Court observed that there was no material on record to indicate as to why this document was not produced. The Petitioners' case that the respondent had tendered his resignation has also not been accepted since they were not able to produce any letter of resignation. The Industrial Court, therefore, accepted the view taken by the Labour Court that the defence of the petitioners that the respondent had abandoned his service is not believable. The Industrial Court being conscious of its limited jurisdiction under section 44 of the MRTU & PULP Act, rejected the revision. The present petition has been filed against both these orders.

5. The learned Advocate appearing for the Petitioners contends that both the Courts below were in error in disbelieving the evidence of the Petitioners that the Respondent was not a workman but a Manager. He submits that the respondent had orally resigned from service. It is also submitted that the Courts below should have accepted the fact that the petitioners had paid an amount of Rs.10,000/- to the Respondent-workman and had settled his account on 30.3.1994 since he did not report for duty on and from 28.1.1994. It is then contended that in any event both the Courts below were

in error in directing reinstatement since the respondent had already crossed the age of superannuation. According to the learned Advocate, the respondent was 59 years of age when the evidence was recorded on 10.10.1997 and will now be 67 years of age and therefore, there is no question reinstating him in service since the retirement age is 60 years under the model standing orders.

6. The learned Counsel for the respondent submits that the Petitioners have not established their case before the Labour Court that the respondent had resigned from service nor is there any material on record to show that he did not intend to report for duty after 20.1.1994 and in fact both the Courts below have concurrently held that the services of the respondent were terminated on 28.1.1994 illegally and without following the procedure envisaged in law. He urges that in such circumstances this Court should not interfere with the orders under Articles 226 and 227 of the Constitution of India.

7. The learned Advocate submits that there is nothing on record to show that the retirement age in the Petitioner concern was 60 years. No evidence whatsoever has been brought on record by the Petitioners to

indicate that the respondent should not be reinstated in service. Furthermore, when the judgment of the trial Court was delivered i.e., 16.5.1998, the Respondent had already reached the age of 60 years. The Petitioner then ought to have taken this point in the revision application, which they have not. Having failed to do so, such an issue cannot be raised for the first time at the stage of arguments. Furthermore, even in the writ petition, this issue has not been raised and therefore, this Court ought not to permit the Petitioner to raise this issue regarding the age of retirement.

8. In my view, the judgment of the trial Court and the appellate Court on facts cannot be faulted. Both the Courts have concurrently held that the Petitioner had orally terminated the services of the Respondent and had not complied with the pre-requisites in law while terminating the service. No retrenchment compensation was offered nor was any notice or wages in lieu of notice tendered to the respondent. The Labour Court has found on evidence that the muster rolls had not been produced in order to indicate that the respondent remained absent from 28.1.1994 as alleged by the Petitioner. The only muster roll which was produced was of the year 1990 which did not throw any light on the dispute. In such circumstances, the Labour Court has

rightly drawn adverse inference and not accepted the case of the Petitioners that the respondent had voluntarily abandoned his services.

9. The only issue which remains to be decided is whether the respondent is entitled to reinstatement, having crossed the age of 60 years. Admittedly, the Industrial Court Employment (Standing Orders) Act is not applicable to the concern, as less than 50 employees are engaged by the Petitioners. No age of superannuation is fixed by the Petitioners nor is there any evidence on record to indicate that 60 is the retirement age. Admittedly, no letter of appointment was issued to the respondent and, therefore, the respondent would be entitled to continue till he is physically fit. The Petitioners have not shown in any manner that the respondent is not physically and mentally fit to continue with the duties which he was performing prior to his termination of services. Therefore, in my view, the respondent must be allowed to continue in service. The Supreme Court in the case of *Workmen of Kettlewell Bullen & co. Ltd. v/s. Kettlewell Bullen & co. Ltd.*, **1964 II LLJ 146** was considering a case as to what should be the retirement age of an individual worker. The Supreme court noted that the rules of retirement at the age of 55 years had been framed in 1957 and 1951 in that

case. It held that such rules would not apply to any workman who was employed prior to those dates. The Supreme Court observed that since there was no rule or condition of service as regards the age of retirement, the workmen could continue as long as they remain fit. In the case of *M.K. Mulki v/.s Kemen Pvt.t Ltd & Ors.*, **2002 (95) FLR 567**, I had an occasion to consider as to whether a person who had crossed the age of 60 years could be continued in service, when there was no retirement age fixed. In that case, although it has been held that the workman was entitled to continue beyond the age of 60 years, since he was admittedly not in good health, compensation was awarded to him. In the case of *Krishna G. Kasar v/s. India United Mills No.2 & Anr.*, **2004 II CLR 430** relied on by the learned Advocate for the Petitioners, it has been held that where the age of superannuation has been fixed under the Standing Orders, the workman could not be continued upto the age of 63 years. This judgment, in my view, would have no application since the standing orders framed under the Bombay Industrial Relations Act were applicable to the conditions of service of the employees in that case. In the present case, there is no dispute that the model standing orders would not be applicable to the employees, as there were less than 50 workmen. Therefore, in my view, there cannot be any obstacle to

the respondent continuing in service since it is nobody's case that he is either physically or mentally unfit.

10. Rule discharged. No order as to costs.